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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Kevin Johnson, *on behalf of himself and*)
all others similarly situated,)

Plaintiff,

vs.

Serve All, Help All, Inc. d/b/a
Nonprofit Alliance of Consumer
Advocates, Faith First Bancorp, Inc.,
and CDLG, PC d/b/a Consumer
Defense Law Group,

Defendants.

) Case No. 8:24-cv-01108-FLA (KESx)

)
) **REPLY IN SUPPORT OF MOTION**
) **FOR LEAVE TO FILE AMENDED**
) **COMPLAINT**

) **Date: February 14, 2025**

) **Time: 1:30 p.m.**

) **Judge: Hon. Fernando L. Aenlle-**
) **Rocha**

) **Courtroom: 6B**

) **Action Filed: 5/24/24**

) **Trial Date: Not Set**
)
)
)

1 In response to Kevin Johnson’s (“Plaintiff”) request for leave to file an
2 amended complaint, Serve All, Help All, Inc. d/b/a Nonprofit Alliance of Consumer
3 Advocates (“SAHA”), Faith First Bancorp, Inc. (“FFB”), and CDLG, PC d/b/a
4 Consumer Defense Law Group (“CDLG”) (SAHA, FFB, and CDLG are together,
5 “Defendants”) raise two fundamental arguments: (1) bad faith; and (2) futility. For
6 the reasons explained below, those arguments are either profoundly undeveloped
7 and incoherent, or simply a flat misread of the law.

8 **I. Argument**

9 **A. FFB and CDLG completely fail to demonstrate “bad faith.”**

10 FFB and CDLG briefly respond in opposition to Plaintiff’s request to amend
11 by—to the extent that Plaintiff can understand their argument—suggesting that
12 Plaintiff’s proposed amendment is brought in bad faith. Specifically, FFB and
13 CDLG, through their response in opposition, argue that Plaintiff is acting in bad
14 faith by seeking amendment because “Plaintiff clearly knew or should have known
15 he was going to proceed in this fashion given his attorney’s knowledge of lawsuits
16 alleging similar unsubstantiated facts and that the discovery responses have
17 revealed that PBM is nothing more than a third-party company that provides
18 business related services to the Defendants.” ECF No. 44 at 2-3. Although they cite
19 nothing and address none of Plaintiff’s evidence, it appears that FFB and CDLG are
20 arguing that, at some point prior to the amendment deadline, Plaintiff was aware
21 that “unsubstantiated facts” in other unrelated lawsuits implicated the entity
22 Plaintiff seeks to add via amendment: Professional Business Management
23 Corporation (“PBM”).

24 The Court should not credit FFB and CDLG’s argument. “In the context of a
25 motion for leave to amend, ‘bad faith’ means acting with intent to deceive, harass,
26 mislead, delay, or disrupt.” *Dexcom, Inc. v. AgaMatrix, Inc.*, No. CV 16-05947 SJO
27 (ASx), 2017 U.S. Dist. LEXIS 174247, at *21 (C.D. Cal. Feb. 3, 2017). FFB and
28 CDLG not only fail to provide any evidence that Plaintiff’s requested amendment

1 is done for the purposes of deceiving, harassing, misleading, delaying, or disrupting
2 the parties, FFB and CDLG do not even advance the argument aside from invoking
3 the phrase “bad faith”.

4 Conversely, Plaintiff demonstrates that he has acted diligently in this matter.
5 Only after FFB and SAHA provided verified discovery responses evidencing that
6 PBM was an integral part of the pipeline funneling consumers from the “charity” to
7 the for-profit family business affiliates did Plaintiff seek leave to amend to add
8 PBM. *See* ECF No. 40-2 at ¶¶ 10, 13-20. FFB and CDLG dispute none of that.
9 Rather, they protest that Plaintiff should have sought amendment earlier because
10 there are other lawsuits “alleging similar unsubstantiated facts.” ECF No. 44 at 3.
11 This argument is internally inconsistent on its face, given that Plaintiff only sought
12 leave to amend after receiving verified discovery responses establishing PBM’s
13 involvement in the scheme, *rather than* blindly following what FFB and CDLG
14 contend are “unsubstantiated facts.” FFB and CDLG seem to protest simultaneously
15 that those other lawsuits are “unsubstantiated” and therefore presumably invalid,
16 but also that Plaintiff should have relied on them without substantiating them first.

17 The Court should accordingly reject FFB and CDLG’s conclusory and
18 unsubstantiated claim that Plaintiff is seeking amendment in “bad faith.”

19 **B. SAHA’s frivolity argument is premised on its ongoing citation**
20 **to the wrong law.**

21 SAHA’s opposition—premised on the “futility” of amendment—fares no
22 better. SAHA premises this position on two underlying arguments: (1) that, as a
23 charity, SAHA is entitled to robocall without consent and without recourse; and (2)
24 that only the caller can be liable for placing the robocalls without consent. Ergo, as
25 SAHA would have it, it can robocall consumers indefinitely, and then funnel those
26 consumers to its for-profit affiliates, thereby concocting a scheme to immunize the
27 various enterprises from TCPA liability. Not so, and SAHA’s futility argument
28 therefore necessarily fails.

1 To be sure, “a proposed amendment is futile only if no set of facts can be
2 proved under the amendment to the pleadings that would constitute a valid and
3 sufficient claim or defense.” *Sweaney v. Ada Cnty.*, 119 F.3d 1385, 1393 (9th Cir.
4 1997). For that reason, “[d]enial of leave to amend on this ground is rare. Ordinarily,
5 courts will defer consideration of challenges to the merits of a proposed amended
6 pleading until after leave to amend is granted and the amended pleading is
7 filed.” *Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003).

8 Through his proposed amendment, Plaintiff seeks leave to add PBM as a
9 defendant on the basis that FFB and SAHA’s sworn discovery responses
10 demonstrate that PBM (1) provides business services for those entities; (2) is owned
11 by the spouse of one of SAHA and FFB’s executives; and (3) that PBM receives
12 referral fees on behalf of SAHA when SAHA sends consumers it robocalls to its
13 various for-profit affiliates. *See* ECF No. 40-6 at ¶¶ 32-42. In other words, Plaintiff
14 seeks to allege that SAHA uses PBM to be the beneficiary for SAHA’s for-profit
15 robocalling. This can lead to liability for PBM based on an agency theory, such as
16 ratification. *See Bumpus v. Realogy Brokerage Grp. LLC*, No. 3:19-cv-03309-JD,
17 2022 U.S. Dist. LEXIS 52650, at *21 (N.D. Cal. Mar. 23, 2022) (“Ratification of a
18 third party’s acts may be accomplished by ‘knowing acceptance of the benefit’ of
19 the third party’s actions or through willful ignorance.”).

20 SAHA’s argument simply fails to address these allegations, or that reality.
21 Rather, it again leans on its facially incorrect argument that charities cannot be held
22 liable for robocalling under the TCPA. That is wrong, for the reasons detailed in
23 Plaintiff’s response to SAHA’s motion to dismiss. *See* ECF No. 32 at Argument §
24 I. Simply put, SAHA continues to conflate telemarketing with robocalling—each
25 which have distinct statutory elements and requirements under the TCPA—and
26 wrongly applies telemarketing regulations to its delivery of artificial or prerecorded
27 voice messages without consent: the robocalling at issue. *Compare* 47 U.S.C. §
28 227(b)(1)(A)(iii) *with* § 227(b)(1)(B).

1 Thus, for all of these reasons, the Court should reject SAHA's futility
2 argument.

3 **C. Defendants do not present any compelling claim of burden.**

4 Lastly, Defendants contend that amendment would impose undue burdens,
5 but fail to meaningfully articulate what those burdens are or would be. SAHA
6 argues that its discovery obligations could increase, but that is simply false: Plaintiff
7 is entitled to—and *already is*—seeking discovery on these matters from SAHA, and
8 amendment will not change that. *See, e.g.*, ECF No. 40-4 (containing several
9 discovery requests directed at SAHA concerning its relationship and transactions
10 with PBM as it relates to the robocalling scheme). And if PBM were not a party to
11 the case, Plaintiff will subpoena it anyway, so it would likely be *more* efficient to
12 conduct discovery with PBM as a party, rather than via subpoena.

13 Lastly, Defendants argue that allowing amendment would disrupt the case
14 schedule, but again, fail to articulate how: SAHA has failed to produce a single
15 document in response to Plaintiff's discovery requests to-date, demonstrating the
16 nascency of proceedings, and FFB and CDLG fail to point to *anything* that would
17 be changed, except for the potential for a follow-up scheduling conference, if one
18 is so required. But, given that counsel for FFB and CDLG already represent PBM
19 and SAHA in other matters, and given that PBM and Defendants are so closely
20 interrelated, the parties need not change the schedule in this case whatsoever to
21 accommodate Plaintiff's proposed amendment.

22 **II. Conclusion**

23 For all of these reasons, Plaintiff respectfully requests that this Court grant his
24 request for leave to file the amended complaint—ECF No. 40-6—attached to his
25 motion for leave to file the amended complaint.

26
27 Date: January 30, 2025.

/s/ Alex D. Kruzyk

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Certificate of Compliance

The undersigned, counsel of record for Plaintiff, certifies that this brief contains 1,261 words, which complies with the word limit of L.R. 11-6.1 and this Court's instruction at ECF No. 14.

Date: January 30, 2025.

By: /s/ Alex D. Kruzyk